IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.762 OF 2006
WITH
CIVIL APPLICATION NO.832 OF 2006
IN
SECOND APPEAL NO.762 OF 2006

Saraswatibai Tukaram Saude .. Appellant.
Vs.
Lakhu Balku Patil & Ors. .. Respondents.

WITH

SECOND APPEAL NO.802 OF 2006
WITH
CIVIL APPLICATION NO.831 OF 2006
IN
SECOND APPEAL NO.802 OF 2006

Saraswatibai Tukaram Saude .. Appellant.
Vs.
Rakhamaji Maruti Patil & Ors. .. Respondents.

Mr.Macchindra A.Patil for the appellants.
Mr.Kuldeep S.Patil for the respondents.

CORAM : D.B.BHOSALE, JJ.
DATED : 1ST AUGUST, 2007.

P.C.:

. Heard learned counsel for the appellants/applicants and respondent.

2. These two appeals are arising from concurrent findings of facts recorded by the courts below by which suits filed by the plaintiffs-respondents stand decreed. Though the plaintiffs in regular civil suit nos.10 of 1976 and 11 of 1976 are different, the defendant is common. In this matter, on earlier occasion, two second appeals were filed by the

plaintiffs bearing second appeal nos.44 of 1990 and 45 of 1990 challenging the judgment and order of the appellate court which had set aside the judgment and decree passed by the trial Court. This court had allowed those appeals and remanded the matter to appellate court for deciding the appeals afresh after making certain observations in the order. Upon perusal of the judgment dated 9.8.2005, disposing of second appeal nos.44 of 1990 and 45 of 1990, it appears the learned Single Judge had made certain observations and held that insofar as agreement for sale - Exhibit-44 is concerned, it stands proved and remanded the matter to the lower appellate court with direction to record a finding whether the appellants-plaintiffs are entitled to specific performance of the agreement at Exhibit-44. In view of this the appellate court framed only one point for determination and answered it in affirmative in both the suits.

3. The suit lands in question are different. Two sale deeds in respect thereof were executed in favour of the defendant and on the very same date the agreement for sale (Exhibit-44) was executed by the defendant in favour of both the plaintiffs. Since this court in earlier round of litigation held that the agreemnt for sale at Exhibit-44 stands proved,

the scope of the hearing of the appeal was very limited and the appellate court had rightly framed the aforesaid point for determination. It is in this backdrop the submissions advanced by Mr.Patil, learned counsel for the appellants that the appellate court has failed to apply its mind independently and has simply reproduced few paragraphs from the judgment of the trial Court. He, therefore, submitted that the second appeal be remanded to the appellate court to decide the appeals afresh. I perused the judgment of the appellate court. It is true that some of the paragraphs are reproduced by the appellate court. However, that by itself would not be sufficient to set aside the impugned judgment for two reasons. Firstly, the paragraph which are introduced have no bearing on the point that was framed for determination, and secondly, the point as to whether the plaintiffs are entitled for specific performance has been answered independently. The findings recorded by the court below are entirely based on the evidence on record. Keeping that in view and considering the judgment of this court dated 9.8.2005 in earlier second appeals, in my opinion, no interference in these appeals is called for. No substantial question of law is raised. In the circumstances the appeals are dismissed. Consequently, the civil applications are also

disposed of.

(D.B.BHOSALE, J.)